

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

UNITED STATES OF AMERICA,

v.

DONTAVIOUS BERRY,

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CRIMINAL ACTION NO.
1:16-CR-0413-AT-1

CIVIL FILE NO.
1:18-CV-4186-AT

ORDER

Presently before the Court is the Magistrate Judge's Report and Recommendation ("R&R") [Doc. 82] recommending that the §2255 motion [48] be granted to the degree that Movant seeks an out of time appeal, and that Movant's §2255 motion otherwise be dismissed without prejudice. The Government withdrew its opposition to the §2255 motion and defendant has filed no objections.


A district judge has broad discretion to accept, reject, or modify a magistrate judge's proposed findings and recommendations. United States v. Raddatz, 447 U.S. 667, 680 (1980). Pursuant to 28 U.S.C. § 636(b)(1), the Court reviews any portion of the R&R that is the subject of a proper objection on a *de novo* basis and any non-objected portion on a "clearly erroneous" standard. Accordingly, the Court has reviewed the record in this case for clear error and finds none. Therefore,

IT IS ORDERED AND ADJUDGED that the Court **ADOPTS** the Report and Recommendation [Doc. 82]. The criminal judgment in this action is **VACATED** and the Court **REIMPOSES** the original sentence as of this date, with credit for all time served since April 3, 2017, and any special assessment that may have been paid. All other terms and conditions of the original sentence are hereby incorporated by reference.

Defendant has the right to an appeal. If defendant is unable to pay the cost of an appeal, you may apply for *in forma pauperis* status to pursue the appeal. If you request, the Clerk of this Court will prepare and file a notice of appeal on your behalf. If you are unable to afford counsel for the appeal, an attorney will be appointed for you. With few exceptions, the notice of appeal must be filed within fourteen (14) days of the entry of this order.

Accordingly, Defendant's §2255 motion [Doc. 48] is **GRANTED in PART and DENIED in PART**. Defendant's §2255 motion is **GRANTED** to the extent that he may file an appeal of this judgment. The remainder of Defendant's §2255 motion is **DISMISSED without prejudice**.

IT IS SO ORDERED this 16th day of September, 2019.


AMY TOTENBERG
UNITED STATES DISTRICT JUDGE